IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.810 OF 2006
IN
SUIT NO.770 of 2006

Padmini Jain ...Plaintiff
Vs.
Ashok Kumar Jain ...Defendant

Mr.Shahi Jain Advocate with Mrs. Naina Desai for Plaintiff
None for Defendant

CORAM: SMT. ROSHAN DALVI, J.
DATE : 18TH DECEMBER, 2006.

P.C.

1. It is the Plaintiff's case that under the Agreement for Sale, Power of Attorney and an Affidavit, all executed on 28th January, 2005 the Plaintiff purchased the suit premises which is a shop bearing No.F/S/M-3-2/19 in Parel, Mahatma Co-Operative Housing Society Ltd., Jerbai Wadia Road, Bhoiwada, Parel, Mumbai-400 012 from the Defendant and took possession thereof. However, since the Defendant has to wind-up his business/affairs the Plaintiff allowed the Defendant to continue in possession under a separate Agreement for permissive use executed three days thereafter on 1st February, 2005. Under the said agreement the Defendant was to handover the possession to the Plaintiff on 31st December, 2005. The Defendant failed to handover the possession. Hence, this suit is filed for possession.

2. The Plaintiff prays for possession and incidental reliefs, appointment of Court Receiver in respect of the

suit shop.

3. The Defendant has filed his affidavit in reply. The copy of the affidavit in reply has been served upon the Plaintiff. The original Written Statement is on record.

4. The case of the Defendant is that the Plaintiff is a money lender and he had lent financial help of Rs.10,00,000/- to him and had got executed the aforesaid documents without allowing the Defendant to read them or give him a copy thereof. The Defendant as well as his brother signed, not knowing about the contents of the documents and the Plaintiff assured them that it would not be prejudicial to them and will be returned upon repayment of the amount of Rs.10,00,000/-. The loan not having been repaid, the Plaintiff has sought specific performance of the Agreement for sale dated 28th January, 2005.

5. The suit is therefore, for possession of immovable property as well as for specific performance of the transaction of that immovable property. The Suit is valued at Rs.10 Lakhs which is the loan amount. The suit shop is stated to be admeasuring 240 Sq.ft. This area is not mentioned in the documents. It is orally stated to Court. For an immovable property at Parel even admeasuring 240 sq. Mtr.the valuation in the suit does not represent the value of the property as in 2006. The suit is therefore, incorrectly valued. The Plaintiff

cannot be granted reliefs in respect of an immovable property without valuing the immovable property itself as on the date of suit as per its market value as required under Section 6(v) of the Bombay Court Fees Act. The Plaintiff cannot be granted reliefs with regard to the immovable property, after the valuation is made on the basis of the loan given by the Plaintiff. For the return of the loan the immovable property of the Defendant cannot be secured. Hence, no relief as prayed in the Notice of Motion can be granted since the suit is inadequately valued. In fact the suit as valued is liable to be rejected.

6. Mr. Jain, on behalf of the Plaintiff, states that the Plaintiff shall correctly value the suit based upon the market value of the suit premises as on the date of the filing of the suit and apply for reliefs. Liberty is granted to the Plaintiff to take out a further Notice of Motion for same or similar reliefs after valuing the suit correctly.

7. An ad-interim order came to be passed on 17th March, 2006 in which the Defendant made a statement that he will not part with the possession or create third party rights in respect of the suit premises. That statement shall continue until further orders.

(SMT. ROSHAN DALVI, J.)